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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,277

03/12/2004

Thomas M. McGrath

3176

1331

26822 7590 04/05/2007
WALTER A. HACKLER
2372 S.E. BRISTOL, SUITE B
NEWPORT BEACH, CA 92660-0755

EXAMINER

HUSON, MONICA ANNE

ART UNIT

PAPER NUMBER

1732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/800,277	Applicant(s) MCGRATH ET AL.	
	Examiner Monica A. Huson	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-16 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the RCE filed 23 February 2007.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Firestone et al. (U.S. Patent 5,799,837), in view of Forte et al. (U.S. Patent Application Publication 2001/0048988). Firestone et al., hereafter "Firestone," show that it is known to carry out a method of forming a bottle useful as a pharmaceutical container and dispenser (Column 1, lines 31-38; Column 5, lines 28-31) comprising providing a mixture of polypropylene resin comprising UV absorbers (i.e. blockers) (Column 2, lines 51-54; Column 9, lines 12-13), and forming the heated UV absorbent mixture into a cylindrical squeezable bottle having a thickness of between 0.5mm and about 2mm (Column 3, lines 17-21) with a volume of 10 cc (Column 2, lines 60-61; 10mL = 10cc); disposing an ophthalmic pharmaceutical formulation into said bottle (Column 4, lines 66-67; Column 5, lines 1-11; Column 10, lines 63-64; It is being interpreted that chlorine dioxide is a known ingredient in ophthalmic pharmaceutical formulations.); and sealing the bottle (Column 12, lines 1-3). Firestone does not show a specific mixing order to obtain his mixture. However, selection of any order of mixing ingredients is prima facie obvious (See MPEP 2144.04 (IV)(C)). Also, Firestone does not specifically show first, second, and third sets of resin pellets, or providing dyestuffs to the pellets. Forte et al., hereafter

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"Forte," show that it is known to carry out a method of making a bottle useful as a pharmaceutical container (Para 0008), including providing combinations of polypropylenes which contain dyes and UV absorbers (i.e. blockers) (Para 0015-0017; It is known in the art that individual blends of molding material, in this case, polypropylenes, will originate in pellet form, including various desired additives such as the claimed dyestuffs and UV blockers. In order to form the final molding material, the different pellet mixtures will be mixed together to form a masterbatch.), heating said UV blocker final mixture (Para 0024), and forming the bottle (Para 0027). Forte and Firestone are combinable because they are concerned with a similar technical field, namely, methods of forming pharmaceutical bottles. It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Forte's teaching of using several blends or alloys which include dyes in the final molding composition which is molded by Firestone's general molding method in order to provide the desired tinting or UV protection factor for the molded article (see Forte, Para 0016-0017).

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Firestone and Forte, further in view of Arakawa et al (6039893).

Regarding claim 14, Forte et al do not teach providing the second resin pellets comprising blue dye and purple dye pellets. However, Arakawa et al teach that bluish-purple and blue dye show absorption bands from 550 nm to 620 nm (col 1 lines 45-47). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to modify Forte's method of making pharmaceutical container to have the blue and purple dye. One would have been motivated to do so in order to create the blue tint taught by Forte et al which must absorb light at wavelengths greater than 500 nm and less than 420 nm.

Regarding claims 15 and 16, Forte et al do not explicitly teach the ratios disclosed. However, one of ordinary skill in the art would know that mixing various proportions of dyestuff would produce a different end result such as light barrier property. Cook et al give the support for above. Cook et al teach that the amount of yellow or black dye included in multi-layered wall material can be varied depending upon the desired light barrier characteristics for a container produced (col 6 lines 40-55). This establishes that the proportions of dyestuff is a result effective variable. Therefore the examiner notes that discovering the optimum value of a result effective variable involves only routine skill in the art. "In re Boesch," 617F.2d 272,205 USPQ215 (COPA 1980). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to determine the claimed ratios in claims 15 and 16 in order to produce a blue tint (a result effective variable) for the final product.

Response to Arguments

Applicant's arguments filed 23 February 2007 have been fully considered but they are not persuasive.

Applicant contends that the teachings of Forte and Firestone do not suggest the instant invention. This is not persuasive because although applicant argues that "it is clear that in the world of dyestuffs, combinations of dyes provide unique results", this assertion is not necessarily proved. The article applicant has attached does not provide conclusive evidence that the steps of mixing necessarily lead to a particular result. For example, although the article purports on page 2 that the sequence in which fabric was dipped into various colors influenced what color the fabric took, this does not necessarily relate to combining the colors themselves. Also, it should be noted that not even the article concludes with certainty that the dipping sequence or specific pigments is the cause for the unique color obtained (see paragraph 1, page 3: "*whatever* the particular shade, and *however* the Tyrians obtained

it..."). Therefore, this reasoning is not persuasive, and it is maintained that it would have been obvious to carry out the instant invention in view of the teachings of Forte and Firestone.

Applicant further contends that the claimed order of mixing in the present invention should be recognized as being important with regard to resins. Applicant cites US 7124361 as showing support for this assertion. This is not persuasive because US 7124361 is not really related to resins and dyes combined.

To further support the Examiner's position that any order of mixing resins and dyes is obvious (absent new and unexpected results), see US 4197087 which deals with combining dyes with polymers, especially note Column 5, lines 44-54. Also see US 4824905, Column 5, lines 19-40 for support that mixing order does not inherently affect a process or its outcome. It is maintained that varying the mixing order would be an obvious experimental change, absent new or unexpected results.

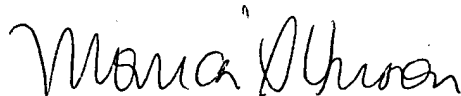
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A. Huson whose telephone number is 571-272-1198. The examiner can normally be reached on Monday-Friday 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in cursive script, appearing to read "Monica A. Huson".

Monica A Huson

April 2, 2007